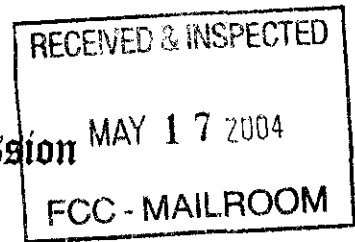


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)

Amendment of Section 73.202(b),)
FM Table of Allotments, FM Broadcast Stations)
(Madison, Missouri))

MB Docket No. 04-117
RM-10928

TO: Audio Division

COMMENTS OF KIRK, L.L.C. IN OPPOSITION TO
RECLASSIFICATION OF CHANNEL

KIRK, L.L.C. (hereinafter "KIRK"), by its attorney, hereby respectfully submits the following comments in opposition to the reclassification of Channel 247C3, Madison, Missouri, from a commercial channel to a reserved, non-commercial, channel.

I. Commentator and Its Interest in This Proceeding

1. Channel 247C3 was added to the FM Table of Allotments by Report and Order, effective January 14, 2002, published at 66 FR 776. Therefore, the channel has been in the table for more than two (2) years, the principles of KIRK have been aware that the channel was in the table; and they had been planning to actively bid for the channel, when it comes up for auction.

2. In this proceeding, however, the Commission proposes to reclassify the channel from a commercial channel to a non-commercial educational channel. KIRK opposes this reclassification. As we will show, the channel does not qualify for non-commercial status.

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II. Channel 247C3 at Madison, Missouri Does Not Qualify for Reclassification As a Reserved Channel

3. The standards for reclassification of commercial channels to NCE status are set forth in a *Second Report and Order*, issued last year and published at 18 FCC Rcd 6691. *Reexamination of the Comparative Standards of Non-Commercial Applicants* (“*NCE Order*”), 18 FCC Rcd 6691 (2003).

4. The Commission has determined that a vacant FM allotment may be reserved for NCE broadcasting if both of the following two conditions are satisfied:

a. Under-Served Population. A maximum class facility built at the commercial allotment reference coordinates would provide first or second NCE service to at least ten percent of the population within its service area. At least 2,000 persons must receive first or second NCE service. *NCE Order*, 18 FCC 6691, at para. 34; and

b. Technical Preclusion Showing. No reserved band frequency is available which could be used to cover the under-served population identified in Step One. The *Second Report and Order* suggests a test procedure using five sites that is “designed to provide a reliable and efficient proxy of technical preclusion.” Paragraph 35 further states, “It is not a conclusive test, but one that the Commission will treat as establishing a rebuttable presumption of technical preclusion.” *NCE Order*, 18 FCC 6691, at para. 35-36.

5. While paragraphs 35 and 36 of the *NCE Order* provide a permissible mechanism for reclassification of a commercial channel to NCE status, paragraph 37 provides a procedure for conclusively rebutting reclassification requests. Paragraph 37 states, in pertinent part, that,

“ . . . A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the ‘first or second service’ criterion. “

NCE Order, 18 FCC 6691, at para. 37.

6. In this particular case, the reclassification of the Madison channel was requested in a petition filed by the American Family Association. The Petitioner purported to show that no reserved channel could be used for the proposed facility at any of the five (5) tested sites. However, American Family is mistaken.

7. As shown in the attached Engineering Report, prepared by Munn-Reese, Inc., an alternative channel can be utilized in the reserved portion of the band from the transmitter site situated in the center of Madison, Missouri. Moreover, this alternative channel will provide coverage of the required white and gray NCE service areas. Therefore, the Madison channel does not qualify for reclassification, and must remain a commercial channel, subject to auction at the next available opportunity.

III. Other Matters

8. KIRK is this day filing an opposition to a proposal by American Family Association in Docket No. 04-115, to reclassify Channel 278C2, at Huntsville, Missouri, from a commercial channel to an NCE channel. In its comments in the Huntsville proceeding, KIRK shows that there are at least two (2) channels which will fit in the reserved portion of the band at the center of Huntsville, Missouri. At least one (1) of these channels can be allocated at Huntsville, and still be compatible with the channel which we are suggesting as an alternate, reserved band channel at Madison. Therefore,

KIRK's comments in the Huntsville and Madison proceedings, respectively, are consistent and compatible.

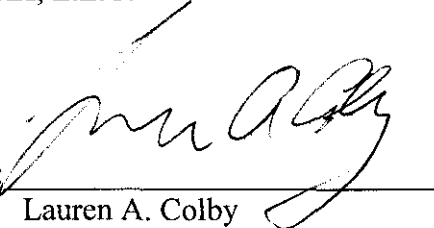
WHEREFORE, the premises considered, KIRK respectfully opposes reclassification of channel 247C3 at Madison, Missouri, from a commercial channel to an NCE channel.

May 14, 2004

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

Respectfully submitted,

KIRK, L.L.C.

By: 
Lauren A. Colby
Its Attorney

ENGINEERING REPORT

Statement of NCE Alternate Channel Reservation

Concerning

Allocated Channel CH247C3 – Madison, MO

April, 2004

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MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

DISCUSSION

The firm of Munn-Reese, Inc., was retained to prepare this report analyzing the potential for the reservation of Allocation Channel CH247C3, Madison, Missouri for non-commercial use. The methodology used in this determination has been taken from MM Docket No. 95-31, Second Report and Order, concerning the Reexamination of the Comparative Standard for Non-Commercial Education Applicants. Based on paragraphs 33 through 38 of the Second Report and Order, the Madison CH247C3 allotment may not be reserved for NCE use because reserved band channel CH206C3 is allocable with minimum Class C3 facilities.

The Commission has determined that a vacant FM allotment can be reserved for NCE broadcasting if both of the following two conditions are satisfied:

1. Under-Served Population. A maximum class facility built at the allotment site would provide first or second NCE service to at least ten percent of the population within its service area. At least 2000 persons must receive first or second NCE service. *Second Report and Order*, 18 FCC 6691, at para. 34, March 4, 2003.
2. Technical Preclusion Showing. No reserved band frequency is available which could be used to cover the under-served population identified in Step One (testing from five different sites). *Second Report and Order*, 18 FCC 6691, at para. 35-36, March 4, 2003.

A Petition filed by the American Family Association purports to show no reserved band frequency is available for a Class C3 facility at any of the five sites. However, it has been determined a suitable reserved band channel is available at one of the sites: the center of the community of Madison.

Exhibit 1.1 is an NCE allocation study for CH206C3. This study has been conducted from the city reference coordinates of Madison, Missouri in accordance with paragraph 35 of the Second Report and Order. Class C3 parameters of 6.1 kW ERP (vertical only polarization) at 100 meters HAAT have been employed. These parameters meet or exceed the minimum Class C3 standards set forth in §73.211(a)(1)(v), §73.211(b)(1)(i), and §73.212(a). The transmitter site is within the affected radius of one Channel 6 television station. However, full protection would be afforded the TV-6 station under the provisions of §73.525. **Exhibit 2.1** is a Channel 6 interference study showing compliance with the Rules for the alternate CH206C3 operation.

DISCUSSION (continued)

The availability of a reserved band channel triggers a "first or second" NCE service study as dictated by paragraph 36. Paragraph 36 states: "In the event that an NCE station can be licensed on one or more channels at any of these five sites in compliance with the NCE technical rules, the reservation showing must undertake a 'first or second service' analysis of the technically acceptable facilities at each acceptable site. If any analyzed facility would satisfy the 'first or second service' criterion, the allotment will not be reserved." *Second Report and Order*, at para. 36.

However, Paragraph 37 clearly states the designated reservation procedure is rebuttable. "A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the 'first or second service' criterion." *Second Report and Order*, at para. 37.

Therefore, the present Petition for Rulemaking is directly dependent on the "first or second service" requirement. Analysis of the minimum Class CH206C3 facility 60 dBu contour yields a first or second NCE service population of 12,276 people, as seen in **Exhibit 3.1**. The petitioner computed a total population within the maximum class Channel CH247C3 facility of 63,568 people. Thus, the "first or second service" population covered by the reserved channel facilities is 19.31% of the population in the Channel CH247C3 allotment.

Therefore, the CH247C3 Allotment for Madison, Missouri fails the criteria for NCE channel reservation because an alternate channel exists in the reserved band, and this channel is capable of providing adequate first or second NCE service.

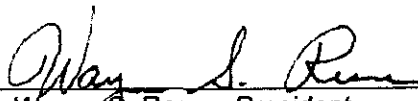
CERTIFICATION OF ENGINEERS

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 385 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report. I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

May 4, 2004

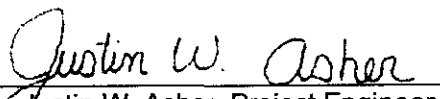
MUNN-REESE, INC.

By:


Wayne S. Reese, President

385 Airport Drive, PO Box 220
Coldwater, Michigan 49036
Telephone: 517-278-7339

By:


Justin W. Asher, Project Engineer

MUNN-REESE, INC.
Broadcast Engineering Consultants
Coldwater, MI 49036

Exhibit 1.1

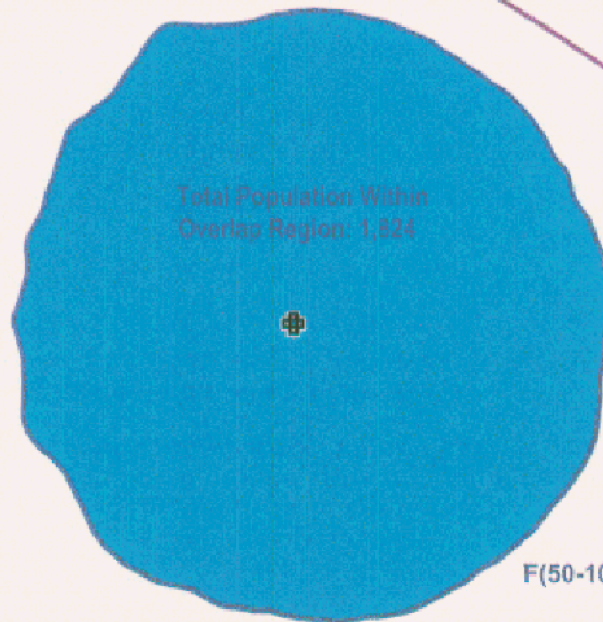
Tabulation of Allocation for Channel 206C3

REFERENCE	CH#	206C3 - 89.1 MHz, Pwr= 6.1 kW, HAAT=100.0 M, COR= 332 M								DISPLAY DATES	
39 28 24 N		Average Protected F(50-50)= 28.4 km								DATA	04-24-04
92 12 35 W		Ave. F(50-10) 40 dBu= 86.9 54 dBu= 43.9 80 dBu= 9.1 100 dBu= 2.8								SEARCH	04-28-04
CH	CALL	TYPE	AZI.	DIST	LAT.	Pwr(kW)	COR(M)	PRO(km)	*IN*	*OUT*	
CITY	STATE		<--	FILE #	LNG.	HAAT(M)	INT(km)	LICENSEE	(Overlap	in km)	
207B WIPA	LIC DCN	77.5	133.81	39 43 25	50.000	316	45.0	34.28	43.28		
Pittsfield	IL	257.5	BLEDD19921221KB	90 41 09	101	70.0	University Of Il At Spring				
206C2 KCLC	LIC DC	116.9	166.33	38 47 05	35.000	214	37.9	18.23	39.36		
St. Charles	MO	296.9	BLEDD20000720AAH	90 30 05	79	118.1	Lindenwood College				
205C2 KJLU	LIC CN	180.7	112.72	38 27 29	29.500	386	51.5	9.05	18.40		
Jefferson City	MO	0.7	BLEDD19951215KB	92 13 32	186	76.0	Lincoln University Of Miss				
208C2 KOPN	LIC CN	178.8	52.78	38 59 53	36.000	325	32.9	21.40	17.18		
Columbia	MO	358.8	BLEDD19930203KA	92 11 48	56	3.4	New Wave Corporation				
205C2 KRNW	LIC CN	288.2	124.39	39 48 48	38.000	382	50.8	22.02	32.09		
Chillicothe	MO	108.2	BLEDD19931006KB	93 35 26	158	75.5	Northwest Missouri State U				
206C3 950213	APP CN	355.4	165.76	40 57 40	13.500	368	38.8	30.71	39.15		
Ottumwa	IA	175.4	BPED19950213MB	92 22 11	135	106.0	Iowa St Un Of Science & Te				
260C3 KIRK	LIC CN	294.5	34.30	39 36 02	12.500	371	37.0	14.0R	20.3M		
Macon	MO	114.5	BLH19980625KA	92 34 24	124	41.0	Kirk, L.l.c.				
One-step application from Channel 260A.											
203B WQCAPM	LIC CN	53.4	93.66	39 58 18	40.000	325	51.5	58.52	39.29		
Quincy	IL	233.4	BLEDD19870930KA	91 19 42	160	5.8	Great Commission Broadcast				
206C KWFC	LIC DCY	194.4	260.17	37 12 06	53.290	782	69.1	70.83	105.28		
Springfield	MO	14.4	BLEDD19980501KA	92 56 33	342	161.8	Baptist Bible College, Inc				
From Channel 206C1-Amended 971017											
206A 950515	APP CN	6.5	169.97	40 59 38	1.000	274	12.5	95.43	69.04		
Fairfield	IA	186.5	BPED19950515ML	91 58 48	46	44.9	American Family Associatio				
Amended 950921											
209C3 981020	APP CN	99.5	84.97	39 20 37	9.000	314	26.9	53.02	55.23		
Bowling Green	MO	279.5	BPED19981020MC	91 14 15	74	2.7	New Life Evangelistic Cent				
209A KKTR	LIC C	338.3	84.32	40 10 40	1.000	329	11.7	52.36	69.75		
Kirksville	MO	158.3	BLEDD20020807AAH	92 34 40	40	1.6	Truman State University				
204A KTRM	LIC CN	338.3	84.32	40 10 40	1.000	329	11.7	52.36	69.75		
Kirksville	MO	158.3	BLEDD19980217KE	92 34 40	40	1.6	Truman State University				
06Z2E KMOSTV	LI HY	211.3	109.89	38 37 36	100.000	864	127.9	To Grd B=	-18.05		
Sedalia	MO	31.3	BLETT20010926ACE	92 52 03	597		Board Of Governors Of Cent				

ERP and HAAT are on direct line to and from reference station.
 "**Affixed to 'IN' or 'Out' values = site inside protected contour.

MUNN-REESE, INC.
 Broadcast Engineering Consultants
 Coldwater, MI 49036

Exhibit 2.1 Channel 6 Study CH206C3 Class C3 Facilities

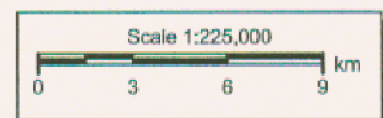


The transmitter site for the use of Channel 206C3, is located within the affected radius of a Channel 6 television station, KMOS-TV, Sedalia, MO. A study has been made of the potential for interference to the reception of this television station, in accordance with the provisions of §73.525 of the Rules. Calculations were done in accordance with §73.525(e), and there is contour overlap between the proposed facility and KMOS-TV. The contours have been plotted on 2000 Census maps. The population affected was determined as specified in the Rules and found to be 1,824 persons.

This FM alternate operation proposes the use of a non-directional antenna, with vertical only polarization, with a power of 6.1 kW (v). As the FM contour does not reach a community of 50,000 persons or more, the power used for the contour calculations was determined as follows. The ERP used for the calculations was determined using the formula of $P = H + (V/A)$. Solving, $0.0 + (6.1/40) = 0.153$ W. Therefore, $P = 0.153$ kW, the power used to calculate the distance to the FM interference contours.

The FM to TV U/D ratio has been determined by reference to 47 C.F.R. §73.599, Figure 2. No adjustment for television reception antenna directivity has been taken.

A Probe II™ map has been included showing the relevant protected contour of KMOS-TV and the corresponding interference contour of the proposed facility. V-Soft Communications has provided the following information regarding this methodology: "This population is obtained through the use of a computer program which extracts a population count based on population centroids defined by U.S. Census 2000 digital census data. This program draws data from the following summary level: State-County-Voting District/Remainder-County Subdivision, Place/Remainder-Census Tract/Block Numbering Area-Block Group."

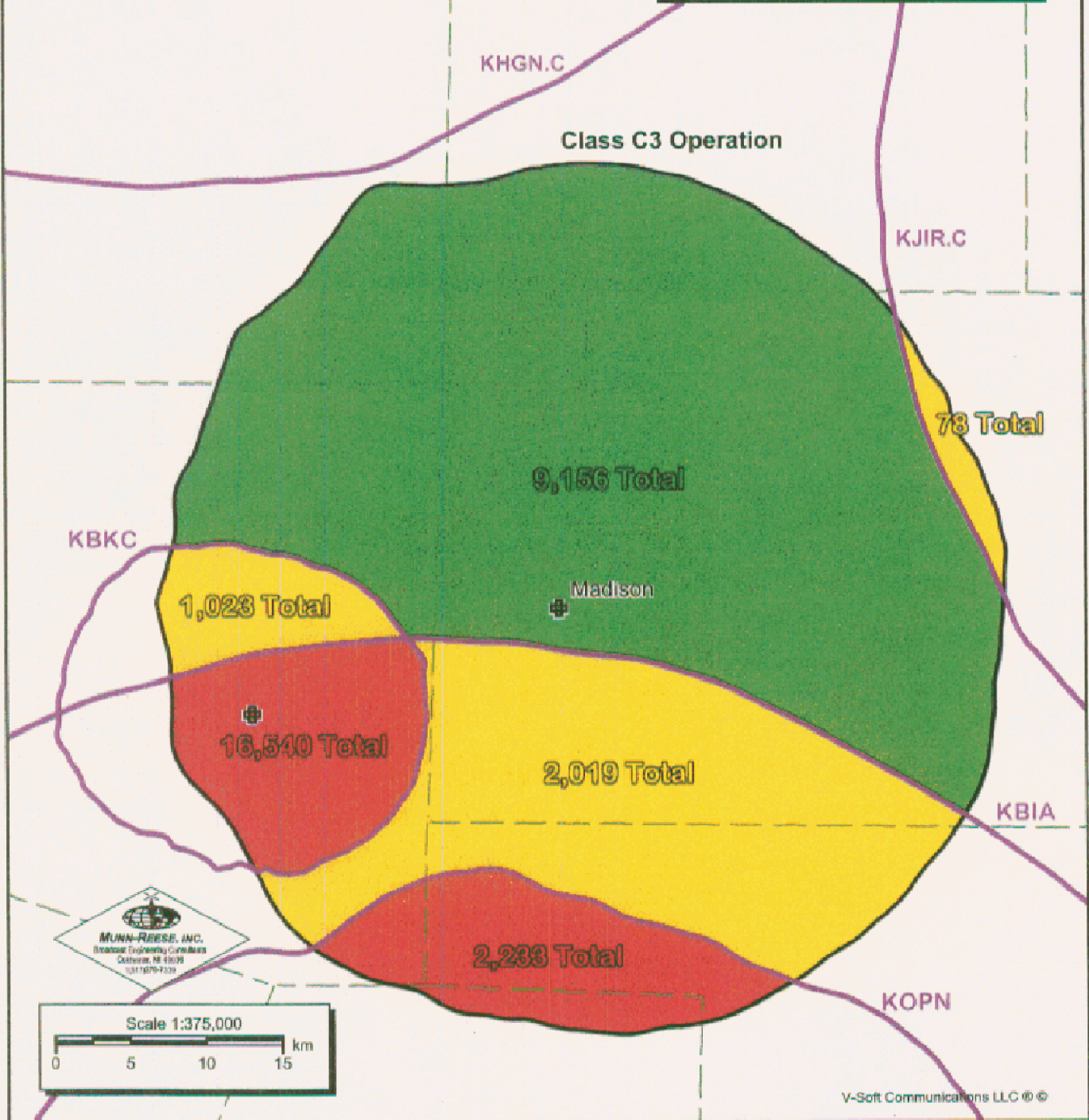


- Area To Receive More Than 2 NCE Services
- Area to Receive Second NCE Service
- Area to Receive First NCE Service

Total ALLO 247C3 Population: 63,568 (DA 03-2990 Attachment A-5, No 208)
 Total 1st & 2nd NCE Population: 12,276 (19.31%)
 Populations derived from U.S. Census 2000 Datum

All Contours Shown Represent 60 dBu Service

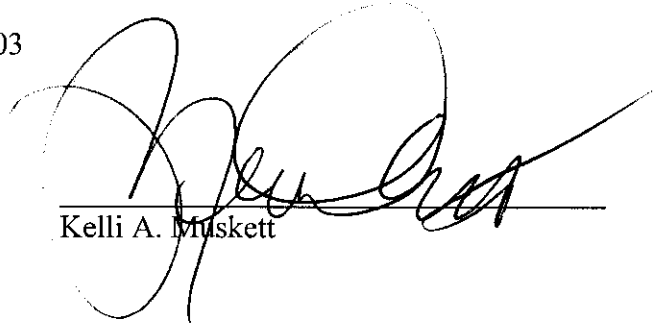
Exhibit 3.1
1st & 2nd NCE
Population Showing
Ch206C3
Madison, MO
Class C3 Facilities



CERTIFICATE OF SERVICE

I, Kelli A. Muskett, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 14th day of May, 2004, to the offices of the following:

American Family Association
Post Office Drawer 2440
Tupelo, Mississippi 38803



Kelli A. Muskett